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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT BEACH

Appeal 2009-007344
Application 10/649,207
Technology Center 2400

Before JOSEPH F. RUGGIERO, CARLA M. KRIVAK, and
BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.

BAUMEISTER, *Administrative Patent Judge*.

DECISION ON APPEAL

SUMMARY

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's rejections of claims 1-25:

Claims 1 and 5 stand rejected under 35 U.S.C. § 102(e) as anticipated by Awater (US 2001/0010689 A1; published Aug. 2, 2001).

Claims 2-4, 6, 8, 9, 14-18, 21, and 25 stand rejected under 35 U.S.C. § 103(a) as obvious over Awater.

Claim 7 stands rejected under 35 U.S.C. § 103(a) as obvious over Awater in view of Neufeld (US 6,628,675 B1; issued Sep. 30, 2003).

Claims 10-13, 19, 20, 22-24 stand rejected under 35 U.S.C. § 103(a) as obvious over Awater in view of Famolari (US 2003/0110484 A1; published June 12, 2003).

We affirm the Examiner's decision rejecting claims 1-17.

We reverse the Examiner's decision rejecting claims 18-25.

ANALYSIS

Appellant describes the present invention as follows: "A system is provided with mobile units that are arranged to conduct wireless data communications with access points following a first protocol, such as IEEE standard 802.11. The mobile units are further arranged for modified protocol communications with peripheral devices that permanently associate with a mobile unit" (Abstract).

Based on the issues raised by Appellant's contentions, we address claims 1-7 as a first group, claims 8-17 as a second group, and claims 18-25 as a third group.

Claims 1-7

Independent claim 1 is representative:¹

1. A method for providing wireless data communications between a mobile unit and an access point of a network and between said mobile unit and at least one peripheral device, comprising:

providing said mobile unit with a data communications device, said data communications device including an interface to a host processor of said mobile unit, a data communications digital processor, including a control program, and *a radio transmitter and receiver*;

operating said data communications device in a first WLAN mode to associate with said access point and engage in data communications with said network via said access point *using said radio transmitter and receiver*;

operating said data communications device in a second personal area communications mode, wherein said data communications device communicates with said at least one peripheral device using *said radio transmitter and receiver*.

(App. Br. 14, emphasis added).

Appellant contends that Awater does not anticipate independent claim 1 because the claim requires a single radio transmitter and receiver (or transceiver) to convey data communications between both (i) the mobile unit and the access point, and (ii) the mobile unit and a peripheral device; whereas Awater discloses a mobile unit that includes two radio transceivers,

¹ Appellant argues claims 1 and 5 together as a group (App. Br. 5-7). Appellant argues the patentability of claims 2-4, 6, and 7 based solely upon their dependency from claim 1. *See* App. Br. 7-9 (asserting that dependent claims 2-4 and 6 include the claim language recited in *claim 11* (App. Br. 7), but we interpret this statement as intending to instead reference claim 1 (*cf.* App. Br. 8:1)). Accordingly, we select independent claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(vii).

each conveying packets respectively to only one of the access point and peripheral device (App. Br. 6-7; Reply Br. 2).

In contrast, the Examiner interprets claim 1 as not requiring only a single transceiver be used (Ans. 15). The Examiner additionally finds that, irrespective of what is actually required by claim 1, Awater's combined 802.11/Bluetooth transceiver does include only a single transceiver (Ans. 14).

Appellant's contentions are only partially persuasive. The italicized portions of claim 1 (reproduced *supra*) indicate that the claim does require only a single transmitter receiver communicating with both the access point and the peripheral device. Turning to the next question of whether Atwater discloses using only a single transceiver, Atwater states the following:

Optionally, the interoperability device has a further mode in which it will not allow the IEEE 802.11 devices and Bluetooth device to receive in parallel. By not allowing this, *only one radio will be operating at a given time, which implies that the radio hardware can be reused.* This again results in an architecture as shown in FIG. 2. . . . If neither the Bluetooth nor the IEEE 802.11 transmitter need to transmit, *the common receiver* listens to either Bluetooth or IEEE 802.11 packets, according to an algorithm.

(Awater, ¶ [0090], emphasis added). We understand this passage as supporting the Examiner's position that, optionally, only a single transceiver need be used.

For the foregoing reasons, Appellant has not persuaded us of error in the Examiner's anticipation rejection of independent claim 1. Accordingly, we will sustain the Examiner's rejection of that claim as well as of claims 2-7, which are not separately argued.

Claims 8-17

Independent claim 8 is representative:²

8. A system for providing wireless data communications, comprising:

at least one access point connected to at least one computer for providing wireless data communications between said at least one computer and at least one mobile unit, said access point using a first data communications protocol to receive association requests from mobile units and to form one or more associations with mobile units for data communications therewith;

at least one mobile unit including a host processor and a first data communications device, said first data communications device including a first data communications digital processor having a first control program and a first radio for sending and receiving data;

at least one peripheral device including a second data communications device, said second data communications device including a second data communications digital processor having a second control program and a second radio;

wherein said first control program is arranged to send association requests to access points using said first radio and to provide data communications to and from said computer via at least one access point connected thereto;

wherein said first control program communicates directly with said at least one peripheral device.

(App. Br. 15-16, emphasis added).

Appellant acknowledges that “when viewed from a generic standpoint, [Awater’s] mobile unit directly communicates with the peripheral device” (App. Br. 8). However, Appellant contends that claim 8

² Appellant argues claims 8-17 together as a group (App. Br. 8, 10). Accordingly, we select independent claim 8 as representative.

more specifically “recites that it is the *first control program* that directly communicates,” and Awater’s singular mention of firmware is insufficient to conclude that the firmware corresponds to the claimed first control program, or what the firmware’s interconnectivities are with respect to the peripheral devices (*id.*).

Appellant’s arguments are not persuasive. Appellant has not explained what meaning is intended by the claim term “directly” (*see* App. Br. 3-4, 8; Reply Br. 2-3). As such, it is not completely clear what it means for a software program of a mobile unit to communicate directly with a peripheral device. Appellant’s Specification does indicate that the software programs 30, 32, within the first data communications device 14 of mobile unit 11, communicate data with the peripheral device 22 via the data communications device’s RF circuitry 28 and the peripheral device’s RF circuitry 66 (e.g., Spec. ¶¶ [0035]-[0036], [0041]; Figs. 1, 2, and 4). That is, Appellant apparently considers the mobile unit’s control program to communicate “directly” with the peripheral device even though the communicated signals are routed through intermediate RF circuitry. We therefore understand the limitation of claim 8 to mean that a control program of a mobile unit may be deemed to “[communicate] directly with [a] peripheral device” per claim 8, irrespective of whether the communications pass through any intermediate circuitry within the mobile unit.

Employing this interpretation of “communicates directly,” we see no reason that would preclude the firmware run on Awater’s CPU 622 from being interpreted as communicating directly with at least one peripheral device. Accordingly, we will sustain the Examiner’s rejection of

representative claim 8, as well as of dependent claims 9-17, which are not separately argued.

Claims 18-25

Independent claim 21 is illustrative:

21. A peripheral device including a data communications device, said data communications device including a data communications digital processor having a control program and a radio, wherein said control program is arranged to cause said data communications device to *permanently associate* with a data communications device on a mobile unit and conduct data communications therewith.

(App. Br. 18, emphasis added).

The Examiner finds Awater does not specifically disclose the control program causing the data communications device to permanently associate with the data communication device on a mobile unit, but it would have been obvious “that the use of Bluetooth technology allows the permanent association of two devices as long as they are within a certain proximity” (Ans. 9). The Examiner subsequently clarifies, “according to paragraph 0053 [of Awater], application software allows synchronization between the device and a PDA, where it would have been obvious . . . that syncing [sic] a PDA to a device is equivalent to making a permanent association” (Ans. 15).

Appellant contends that the Examiner’s interpretation of “permanently associate” is too broad because that interpretation would result in the term’s meaning being identical to the meaning of “associate,” effectively reading the word “permanently” out of the claim.

“Before considering the rejections . . . we must first [determine the scope of] the claims . . .” *In re Geerdes*, 491 F.2d 1260, 1262 (CCPA

1974). Appellant's Specification explains the intended meaning of the claim term "permanent association" as follows:

The term "permanent association" is intended to mean an association that is relatively long term or that requires positive action by the operator to change. Typically a peripheral device, such as a keyboard may be used with only a single mobile unit. If a new or replacement mobile unit is put into operation, a new "permanent association" may be established by the operator, for example, by a specially addressed command to re-establish the association. *The permanent association is intended to survive power-down of either unit or movement of the units out of range of each other.*

(Spec. ¶ [0030]) (emphasis added).

That is, Appellant's Specification indicates that a permanent association must survive "movement of the units out of range of each other" (*id.*), but the Examiner has not made any such finding. The Examiner's rejection is instead based upon the broader interpretation of "permanent association": a connection that lasts only as long as the peripheral device is in proximity to the mobile unit (Ans. 9). Because Appellant has disavowed this broader interpretation (Spec. ¶ [0030]), we are persuaded that the Examiner has not established a *prima facie* showing of unpatentability.

Accordingly, we will not sustain the Examiner's rejection of independent claim 21, or of claim 25, which depends from claim 21. With respect to the remaining rejection of dependent claims 22-24, the Examiner does not allege that Famolari possesses any teachings that would cure the deficiency of the obviousness rejection explained above (Ans. 11-14). For the reasons discussed above, we likewise do not sustain the rejections of dependent claims 22-24.

Independent claim 18 contains similar language, also reciting a data communication device for a permanent association with the peripheral device (App. Br. 18). For the reasons set forth above with respect to claims 21-25, we do not sustain the Examiner's obviousness rejections of independent claim 18, or of claims 19 and 20, which depend from claim 18.

DECISION

The Examiner's decision rejecting claims 1-17 is affirmed.

The Examiner's decision rejecting claims 18-25 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(iv)(2010).

AFFIRMED-IN-PART

gvw